United Nations CAT/C/ROU/QPR/3

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

List of issues prior to submission of the third periodic report of Romania*

Specific information on the implementation of articles 1-16 of the Convention, including with regard to the Committee's previous recommendations

Follow-up questions from the previous reporting cycle

1. In paragraph 21 of its previous concluding observations (see CAT/C/ROU/CO/2, para. 21),[1] the Committee requested the State party to provide follow-up information in response to the Committee's recommendations relating to prolonged detention in police detention and arrest centres, excessive use of force by law enforcement officials, and the national preventive mechanism. The Committee expresses its appreciation for the information received from the State party on those issues (see CAT/C/ROU/CO/2/Add.1), but considers that its recommendations have not been implemented (see paras. 3-4 and 6 below).

Article 2[2]

2. With reference to the Committee's previous concluding observations (para. 7), please provide information on:

(a) Measures taken to guarantee to all detained persons all the fundamental legal safeguards from the very outset of their deprivation of liberty, including their rights: (i) to be informed about the charges against them and about their rights, both orally and in writing, in a language and in a simplified form that they can understand; (ii) to have prompt access to a lawyer and to legal aid, including during initial interrogations; (iii) to have immediate access to an independent medical examination free of charge; and (iv) to have a family member or another appropriate person of their own choice notified of their detention;

(b) Steps taken during the period under review to establish a proper system of registration, with a single unified national register of detention that includes factual details

* Adopted by the Committee at its sixtieth session (18 April-12 May 2017).

[1] Unless otherwise indicated, paragraph numbers in parentheses refer to the previous concluding observations adopted by the Committee.

[2] The issues raised under article 2 could also touch on issues raised under other articles of the Convention, including article 16. As stated in paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties, the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment under article 16 (1) are indivisible, interdependent and interrelated. The obligation to prevent such ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. See also chapter V of the same general comment.

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about the detention, including the justification for detention, transfers, and the exact date, time and place of detention from the outset of deprivation of liberty.

3. With reference to the Committee's previous concluding observations (para. 8) and in the light of the follow-up information provided by the State party, please provide information on:

(a) Steps taken to put an end to the practice of prolonged pretrial and administrative preventive detention during the criminal prosecution[3] and trial phase[4] in police detention and preventive arrest centres;[5] confinement and preventive arrest centres;[6] penitentiaries;[7] and special preventive arrest sections of penitentiaries and preventive arrest centres attached to penitentiaries;[8]

(b) Any steps taken to reduce the duration of the period of preventive arrest during the criminal prosecution from the maximum of 180 days;[9]

(c) Why the transfer of convicted persons or persons held in preventive arrest from penitentiary units to police detention and preventive arrest centres run by the Romanian police, under article 45 (6) of Law No. 254/2013, is necessary for the activity of the judicial bodies;[10]

(d) Whether pretrial, administrative and preventive detention is subject at all times to judicial supervision, which guarantees fundamental legal safeguards;

(e) Any steps taken to increase the use of alternatives to detention during the period under review, taking into account the provisions of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);

(f) General steps to improve the conditions of detention, and on the finalization of work at eight confinement and preventive arrest centres so that they meet minimal detention conditions. Please also provide information on progress in any other centres included in the action plan for short-, medium- and long-term modernization and extension, and on any new centres that have been or are being built with a view to bringing the conditions of detention in line with international standards.[11]

4. With reference to the Committee's previous concluding observations (para. 9) and in the light of the follow-up information provided by the State party, please provide information on:

(a) The number of cases of violence inflicted by law enforcement officials that have been investigated, the number of perpetrators who have been prosecuted for acts of torture and ill-treatment, and the penalties applied to those who have been found guilty;

(b) How the General Prosecutor at the Prosecutor's Office attached to the Bucharest Court of Appeal arrived at the decision that not all the constitutive elements of the criminal offences of illegal arrest and abusive investigation were met in the case concerning the treatment of two persons by officers of the Ilfov Police County Inspectorate,[12] resulting in the dismissal of the complaints filed by the two injured persons as ill-founded (resolution No. 3275,3325/II-2/2011 of 23 November 2011),[13] and the non-initiation of criminal prosecution (ordinance of the Prosecutor's Office attached to the Bucharest Court of Appeal No. 1606/P/2010 of 25 October 2011).[14] The Committee is particularly keen to receive that information given that the treatment of the two persons by

[3] See CAT/C/ROU/CO/2/Add.1, para. 1 (a).
[4] See CAT/C/ROU/CO/2/Add.1, para. 1 (b).
[5] See CAT/C/ROU/CO/2/Add.1, para. 5.
[6] See CAT/C/ROU/CO/2/Add.1, para. 13.
[7] See CAT/C/ROU/CO/2/Add.1, para. 1 (b).
[8] See CAT/C/ROU/CO/2/Add.1, para. 6.
[9] See CAT/C/ROU/CO/2/Add.1, para. 2.
[10] See CAT/C/ROU/CO/2/Add.1, para. 5.
[11] See CAT/C/ROU/CO/2/Add.1, para. 14.
[12] See CAT/C/ROU/CO/2/Add.1, para. 36.
[13] See CAT/C/ROU/CO/2/Add.1, para. 33.
[14] See CAT/C/ROU/CO/2/Add.1, para. 32.

officers of the Ilfov Police County Inspectorate, which was corroborated by medical reports and reported to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, was deemed to be of such gravity as to amount to torture;

(c) The reasons for the low number of prosecutions and convictions in cases of torture and ill-treatment inflicted by law enforcement officials;[15]

(d) Whether judges, especially judges for rights and freedoms, are automatically notified of all cases of ill-treatment and torture in police detention facilities, and whether persons who have complained about such offences are protected from reprisals;

(e) Steps taken during the period under review to establish an independent monitoring and oversight mechanism in order to avoid any institutional or hierarchical connection between investigators and alleged perpetrators;

(f) Whether the State party plans to publicize its commitment to zero tolerance of the use of violence against persons deprived of their liberty, including to elicit confessions, at a level higher than that of police unit chiefs.[16]

5. With reference to the Committee's previous concluding observations (para. 11), please provide information on:

(a) Measures taken to deliver specialized training to public officials on identifying victims of human trafficking and on investigating, prosecuting and sanctioning perpetrators with a view to preventing and eradicating human trafficking, and on steps taken to provide the Committee with comprehensive disaggregated data on the number of investigations, prosecutions and sentences handed down and on the provision of any redress to victims;

(b) The allocation during the period under review of funds to combat trafficking, implement national legislation and continue conducting national prevention campaigns about the criminal nature of such acts.

6. With reference to the Committee's previous concluding observations (para. 17), please provide information on:

(a) Any plans to abolish the penalty of imprisonment for minors;

(b) Steps taken to ensure that children questioned by law enforcement officials at the time of arrest, interrogation and detention are afforded fundamental legal safeguards.

7. With reference to the Committee's previous concluding observations (para. 16) and in the light of the follow-up information provided by the State party, please provide information on:

(a) Whether adequate financial and staffing resources have been allocated to the Office of the Ombudsman in order to enable it to function effectively as the national preventive mechanism, and whether it comprises multidisciplinary teams, including persons with medical and psychiatric expertise;

(b) Whether the staff of the Office of the Ombudsman are able to make regular visits to all places where persons are deprived of their liberty, including without prior notice;

(c) Any steps taken to ensure that the Office of the Ombudsman reports publicly on its findings and that its recommendations are duly taken into account by the relevant authorities and implemented by government agencies and departments and the results reported back to the Ombudsman in a systematic manner;

(d) The functioning of the State party's department for the prevention of torture in places of detention, within the context of the national preventive mechanism.[17]

[15] See CAT/C/ROU/CO/2/Add.1, paras. 41-42.
[16] See CAT/C/ROU/CO/2/Add.1, para. 25.
[17] See CAT/C/ROU/CO/2/Add.1, paras. 50-57.

Articles 2, 11 and 13-16

8. With reference to the Committee's previous concluding observations (para. 10), please provide information on:

(a) Specific steps taken during the period under review to combat impunity and prevent police misconduct, including the excessive use of force, against members of the Roma community;

(b) Steps taken to ensure that cases involving excessive use of force by law enforcement officials against the Roma are investigated, those accused prosecuted under the appropriate articles of the Criminal Code and that those responsible are brought to justice;

(c) The outcome of the criminal prosecution related to the death in custody of Gabriel-Daniel Dumitrache;

(d) Any redress, compensation and rehabilitation provided to Roma victims of acts of violence committed by law enforcement officials;

(e) Any steps taken to end the practice of "administratively conveying" Roma to police stations;

(f) Whether there has been an increase in the number of members of the Roma community recruited by police academies and law enforcement agencies;

(g) Steps taken to punish hate crimes and condemn all forms of hate speech, especially hate speech based on racial and discriminatory motives;

(h) Any training of public officials to recognize, report, investigate and sanction crimes committed with a racist motive, and on any public awareness-raising campaigns concerning the need to respect the dignity and human rights of the Roma.

Article 3

9. With reference to the Committee's previous concluding observations (para. 12), please provide information on:

(a) Steps taken to ensure that, in accordance with the State party's obligations in respect of non-refoulement under article 3 of the Convention, all persons applying for international protection have access to a fair refugee determination procedure;

(b) Any plans to establish a statelessness determination procedure;

(c) Steps taken to ensure that the detention of asylum seekers and aliens is applied only as a last resort and for as short a period as possible, and that alternatives to detention are available in law and implemented in practice;

(d) The number of asylum applications received during the period under review, the number of successful applications and the number of asylum seekers whose applications were accepted because they had been tortured or might be tortured if returned to their country of origin. Please include information, disaggregated by sex, age and country of origin, on the number of persons who have been returned, extradited or expelled since the consideration of the previous report, and the details of the grounds on which they were sent back, including the list of countries to which individuals were returned. Please provide updated information on the type of appeals mechanisms that exist, any appeals that have been made and the outcome of those appeals.

10. With reference to the Committee's previous concluding observations (para. 15), please provide information on:

(a) The outcome of the investigation by the Prosecutor General into the case filed in 2012 with the European Court of Human Rights by Abd al-Rahim Hussayn Muhammad Al-Nashiri, who claimed that he had been illegally detained and tortured in a Central Intelligence Agency detention facility in Romania;

(b) The outcome of any investigations undertaken since the adoption of the previous concluding observations into allegations of the State party's involvement in a

programme involving secret detention centres and on the use of its airports and airspace by aeroplanes involved in so-called "extraordinary rendition";

(c) The number of refoulements, extraditions and expulsions carried out by the State party during the reporting period on the basis of the acceptance of diplomatic assurances or the equivalent thereof, and on any instances in which the State party has offered such diplomatic assurances or guarantees, and what measures have been taken in such cases with regard to subsequent monitoring.

Articles 5 and 7-8

11. Please indicate whether the State party has, during the reporting period, rejected, for any reason, the request of a State for the extradition of an individual suspected of having committed torture and whether it has started prosecution proceedings against such an individual as a result. If so, please provide information on the status and outcome of such proceedings.

Article 10

12. With reference to the Committee's previous concluding observations (para. 18), please provide information on:

(a) Steps to develop and strengthen training programmes to ensure that all public officials involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment, including law enforcement, prison and immigration officers, as well as judicial staff, are aware of the provisions of the Convention, particularly the prohibition of torture;

(b) Steps taken to provide compulsory training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) to all professionals involved in the documentation and investigation of torture and ill-treatment;

(c) Steps taken to develop methodologies to assess the effectiveness and impact of the training programmes on the prevention of torture and ill-treatment.

Article 11

13. With reference to the Committee's previous concluding observations (para. 13), please provide information on:

(a) Specific steps taken during the period under review to improve material conditions of detention in prisons through the renovation of existing prison facilities, closing of those unfit for use and speeding up the building of new ones, including their exact locations, and on any progress made in the implementation of the 2015-2020 strategy for modernization through repairs in the penitentiary system;

(b) Specific measures to reduce overcrowding, including through increased use of alternatives to incarceration, in line with the Tokyo Rules;

(c) Steps taken to ensure that the penitentiary health system is adequately staffed, including by psychiatrists, to provide systematic medical examinations of detainees within 24 hours of their arrival and make appropriate treatment available, especially to detainees with tuberculosis or HIV/AIDS, with monitoring of distribution and medicines taken in all penitentiary facilities;

(d) Steps taken to monitor vulnerable prisoners and prosecute all persons suspected of having committed wilful negligence or physical or psychological torture and ill-treatment and punish them in accordance with the gravity of their acts;

(e) Steps taken to establish an independent mechanism to deal with inmates' complaints and provide effective follow-up and remedial action, and ensure that inmates who complain are not subjected to reprisals;

(f) Steps taken to put an end to the use of special intervention units in penitentiary facilities through improved management, training and by increasing the ratio of staff to prisoners.

Articles 12-13

14. With reference to the Committee's previous concluding observations (para. 20), please provide statistical data, disaggregated by sex, age, ethnic origin or nationality, and place of detention, on complaints of acts of torture or ill-treatment recorded during the reporting period. Please include information on investigations, disciplinary and criminal proceedings, convictions and the criminal or disciplinary sanction applied. Please provide examples of relevant cases and judicial decisions.

Article 14

15. With reference to the Committee's previous concluding observations (para. 19), please provide information on:

(a) Any steps taken during the period under review to enact legislation to include explicit provisions on the right of victims of torture and ill-treatment to redress, including fair and adequate compensation and rehabilitation, in accordance with article 14 of the Convention, and to provide all victims of torture or ill-treatment with full redress in practice;

(b) Whether redress, including fair and adequate compensation, and rehabilitation have been provided to victims of torture or ill-treatment, including to Abd al-Rahim Hussayn Muhammad Al-Nashiri (see para. 9 (a) above).

Article 15

16. Please provide information on concrete measures taken to ensure respect, both in law and in practice, for the principle of inadmissibility of evidence obtained through torture. Please provide examples of any cases that have been dismissed by the courts owing to the introduction of evidence or testimony obtained through torture or ill-treatment.

Article 16

17. With reference to the Committee's previous concluding observations (para. 14), please provide information on:

(a) Specific steps taken to comply with the Committee's recommendation to urgently improve the conditions and treatment in psychiatric hospitals and institutions for persons with mental and psychosocial disabilities;

(b) Any amendments to legislation in order to provide persons with mental and psychosocial disabilities with the right to legal capacity, to ensure effective supervision and monitoring by judicial organs of any placement in psychiatric hospitals and institutions for persons with mental and psychosocial disabilities, and to ensure that involuntary placements are subject to an automatic periodic review;

(c) Steps to ensure effective legal safeguards for all patients, whether they are hospitalized voluntarily or involuntarily, including the right of effective appeal and steps to ensure that they are fully informed about the treatment to be prescribed to them and are given an opportunity to refuse it or any other medical intervention;

(d) Steps taken to set up an independent complaints mechanism and ensure that patients are granted independent legal representation enabling them to complain about living conditions in the institution, their health and treatment, have their complaints examined before a court and the possibility to receive redress;

(e) Results of any investigations into cases of deaths in psychiatric hospitals and institutions for persons with psychosocial disabilities, including the deaths of 16 patients at the Poiana Mare Psychiatric Hospital, the deaths of several hundred patients between 2001 and 2004 and of some 2,000 persons between January 2011 and August 2014 in approximately half of the country, as well as on the treatment of patients at the Gheorghe

Serban Centre for Neuropsychiatric Recuperation and Rehabilitation. Please provide information on any prosecutions and sanctions in connection with those cases.

Other issues

18. Please provide updated information on the measures taken by the State party to respond to threats of terrorism, and describe if and how those anti-terrorism measures have affected human rights safeguards in law and in practice. Please explain how the State party has ensured that those measures comply with all its obligations under international law, especially the Convention, in accordance with relevant Security Council resolutions, in particular resolution 1624 (2005). Please provide information on the relevant training given to law enforcement officers; the number of persons convicted under such legislation; the legal remedies and safeguards available to persons subjected to anti-terrorist measures in law and in practice; whether there have been any complaints of non-observance of international standards; and the outcome of those complaints.

General information on other measures and developments relating to the implementation of the Convention in the State party

19. Please provide detailed information on any other relevant legislative, administrative, judicial or other measures taken since the consideration of the previous report to implement the provisions of the Convention or the Committee's recommendations, including institutional developments, plans or programmes. Please indicate the resources allocated and statistical data. Please also provide any other information that the State party considers relevant.